

DBS LAW LLC

DARREN BRAYER SCHWIEBERT, ESQ.

March 30, 2018

The Honorable David S. Doty

United States District Court

14W U.S. Courthouse

300 South Fourth Street

Minneapolis, MN 55415

Re: *Heroux v. Callidus Portfolio Management, Inc. et al.*

Court File No. 17-CV-5132 (DSD/HB)

Judge Doty,

Plaintiff submits this citation to supplemental authority relating to Defendants' Motion for Judgment on the Pleadings. First, the Southern District of New York in *Guzman v. Mel S. Harris & Assocs*, 2018 U.S. Dist. LEXIS 49622 (S.D.N.Y. March 22, 2018) rejected the same argument made by Callidus in this case. *See id.* at *10 -11 ("Though LRC asserts that the mailing was done by Andino, not by LRC directly, the text of the FDCPA does not require that a debt collector's use of the mails be direct.") (citation omitted). Messerli & Kramer sent documents by mail to Heroux on behalf of Callidus in the underlying case. Moreover, the *Guzman* Court held that the debt buyer was liable for the acts of its counsel in the underlying lawsuit. *Id.* at *13 ("Here, because 'the undisputed evidence shows that MSH filed and litigated the Collection Lawsuit in LRC's name,' LRC 'cannot argue in good faith that MSH was not LRC's attorney and agent at the time alleged sewer service occurred.'").

Second, during the hearing on Defendants' motion, Defendants' counsel presented the Court with the District of Oregon decision *McAdory v. M.N.S & Assocs., LLC*, 2018 US Dist. LEXIS 41161 (D.Or. 2018). Defendants argued that *McAdory* expressly rejected Plaintiff's argument that a debt collector who sues a consumer directly has sufficient interaction with the consumer to be considered a "debt collector" under the FDCPA.

There was no underlying lawsuit in *McAdory*. As alleged in the FDCPA complaint, M.N.S & Associates (a non-law firm collection agency) contacted the consumer by telephone, improperly threatened the consumer, and then executed a settlement agreement which identified DNF. *See* Complaint, ¶¶ 7 -13. DNF did not retain attorneys to file a lawsuit directly against the consumer that was the basis of the FDCPA claim.

Respectfully Submitted,

/s Darren B. Schwiebert

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